

13369 PL-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Against Navy Refusal to Consider Proposal]

FILE: B-197294

DATE: April 7, 1980

DLG00333

MATTER OF: Radionics, Incorporated

DIGEST:

Late proposal submitted by regular metered postage five days in advance of closing date for receipt of proposals does not fall within Defense Acquisition Regulation certified or registered mail exception and therefore is properly not for consideration by agency.

Radionics, Incorporated, protests the Department of the Navy's refusal to consider its offer which was received by the Navy after the closing date for receipt of proposals under solicitation No. N000104-79-R-YW27. Radionics maintains that its offer was mailed by metered postage five days in advance of the scheduled closing date and therefore contends that its proposal falls within the scope of Defense Acquisition Regulation (DAR) provisions allowing for consideration of late proposals. For the following reasons, we find this contention to be without merit. AGC000001

Incorporated by reference in the instant solicitation is DAR § 7-2002.4 which provides in pertinent part:

"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS AND WITHDRAWALS OF PROPOSALS (1977 DEC)

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

"(i) it was sent by registered or certified mail not later than the fifth

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calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); * * *" (Emphasis added.)

Radionics did not mail its offer either by certified or by registered mail, required as a prerequisite to its consideration under DAR § 7-2002.4(a)(i) in the event of late receipt. In this connection, we stated in 46 Comp. Gen. 42, 45 (1966):

"As a general rule, this Office has held that the ASPR [now DAR] language concerning late bids and proposals is mandatory and that any deviation from the requirements, particularly the failure to use registered or certified mail in the case of a bid or proposal delayed in the mail and received after the time set in the solicitation, renders the bid or proposal late and therefore not for consideration."

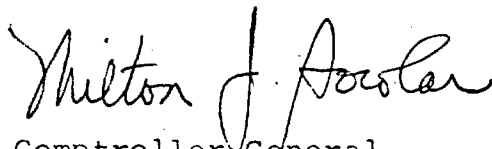
Consequently, we have consistently held that it is the proposer's responsibility to see that its offer is mailed in time to reach the designated office by closing time; and a proposer which elects other than registered or certified mail when using the postal service for delivery of its bid assumes the risk of late delivery. 49 Comp. Gen. 191, 195 (1969); Hesse Machine & Mfg. Co. Inc., B-193984, February 23, 1979, 79-1 CPD 130. We have consistently adhered to the requirement that late bids or offers be mailed five days before the scheduled date for receipt by registered or certified mail to assure that all bidders meet a uniform standard of proof of mailing. The official identifying number applied to such mailed articles provides acceptable evidence and assurance of the actual date of mailing for the particular item of mail. Health Management Systems, Inc., B-195438,

B-197294

3

November 23, 1979, 79-2 CPD 371. Therefore, the Radionics proposal, sent by regular metered mail and received late by the Navy, was properly not considered under the exception stated in paragraph (a)(i) of the DAR Late Proposal clause.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States